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6 Attorneys for Defendant
CITISTAFF SOLUTIONS, INC.

7

8

9 **UNITED STATES DISTRICT COURT**

10 **NORTHERN DISTRICT OF CALIFORNIA**

11 DEMETRIC DI-AZ, OWEN DIAZ, and
12 LAMAR PATTERSON,

13 Plaintiff,

14 vs.

15 TESLA, INC. dba TESLA MOTORS, INC.;
CITISTAFF SOLUTIONS, INC.; WEST
VALLEY STAFFING GROUP;
CHARTWELL STAFFING SERVICES,
INC.; and DOES 1-50, inclusive,

16 Defendants.

17 Case No. 3:17-cv-06748-WHO

18

19 **SUPPLEMENTAL DECLARATION OF
SUSAN T. KUMAGAI IN SUPPORT OF
DEFENDANT CITISTAFF SOLUTIONS,
INC.'S REPLY TO MOTION FOR
SUMMARY JUDGMENT OR, IN THE
ALTERNATIVE, MOTION FOR
SUMMARY ADJUDICATION OF ISSUES**

20 Date: October 23, 2019
Time: 2:00 p.m.
Courtroom: 2, 17th Floor
Judge: Hon. William H. Orrick

21 Trial Date: March 2, 2020
Complaint filed: October 16, 2017
Amended filed: December 26, 2018

I, SUSAN T. KUMAGAI, declare:

1. I am a partner at the law firm of Lafayette & Kumagai LLP, attorneys of record for Defendant Citistaff Solutions, Inc. (“Defendant”) in this action, and am admitted to practice in good standing in this State. I make this supplemental declaration in support of Defendant’s Reply to Motion for Summary Judgment or, in the Alternative, Motion for Summary Adjudication of Issues. If called as a witness to testify regarding the matters stated in this declaration, I would and could testify under oath competently thereto.

2. Attached hereto as **Exhibit “A”** are true and correct copies of the witness oath and excerpts from the deposition transcript of Owen Diaz, Volume One, taken on May 22, 2018.

3. Attached hereto as **Exhibit “B”** are true and correct copies of the witness oath and excerpts from the deposition transcript of Owen Diaz, Volume Three, taken on June 21, 2019.

4. Attached hereto as **Exhibit “C”** are true and correct copies of the witness oath and excerpts from the deposition transcript of Monica DeLeon, taken on December 6, 2018.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct. Executed this 9th day of October 2019, in Oakland, California.

/s/ Susan T. Kumagai
SUSAN T. KUMAGAI

EXHIBIT "A"

1 UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF CALIFORNIA

3

4

5

6 DEMETRIC DI-AZ, OWEN DIAZ and
7 LAMAR PATTERSON, an individual,

8 Plaintiffs,

9 Vs.

REPORTER CERTIFIED
TRANSCRIPT

CONFIDENTIAL

Case No. 3:17-cv-06748-WHO

10 TESLA, INC. DBA TESLA MOTORS,
11 INC.; CitiStaff SOLUTIONS, INC.;
WEST VALLEY STAFFING GROUP;
CHARTWELL STAFFING SERVICES, INC.
12 and DOES 1-10, inclusive,

Defendants.

13 _____/

14

15

CONFIDENTIAL

16

VIDEOTAPED DEPOSITION OF

17

OWEN DIAZ

18

SAN FRANCISCO, CALIFORNIA

19

TUESDAY, MAY 22, 2018

20

21

22

23

Reported By:
24 Candy Newland
CSR No. 14256
25 File No. 18-25470



10:12:56 1 Madame Court Reporter, please swear the witness
2 in.
3 --oOo--
4 OWEN DIAZ,
5 having first declared under penalty of perjury to tell
6 the truth, was examined and testified as follows:
7 --oOo--
8 EXAMINATION
9 BY MS. ANTONUCCI:
10:13:12 10 Q. My name is Barbara Antonucci. I represent
10:13:14 11 defendant Tesla, Inc., dba Tesla Motors, Inc. For
10:13:19 12 purposes of this deposition, I'll refer to my client as
10:13:23 13 Tesla.
10:13:23 14 Do you understand that?
10:13:23 15 A. Yes, ma'am.
10:13:26 16 Q. I also represent CitiStaff Solutions, Inc., and
10:13:26 17 for purposes of this depo, I'll refer to them as
10:13:26 18 CitiStaff.
10:13:32 19 Do you understand that?
10:13:33 20 A. Yes, ma'am.
10:13:33 21 Q. Could you please state your full name for the
10:13:36 22 record.
10:13:36 23 A. My full name is Owen Orappio Diaz, Jr.
10:13:36 24 (Reporter Clarification.)
10:13:36 25 ///

11:10:34	1	Q.	Do you remember what the area code was?
11:10:38	2	A.	No.
<u>11:10:43</u>	<u>3</u>	<u>Q.</u>	<u>And did you speak to someone when you called the</u>
<u>11:10:46</u>	<u>4</u>	<u>corporate office?</u>	
<u>11:10:47</u>	<u>5</u>	<u>A.</u>	<u>Yes.</u>
<u>11:10:48</u>	<u>6</u>	<u>Q.</u>	<u>You spoke with this female?</u>
<u>11:10:50</u>	<u>7</u>	<u>A.</u>	<u>Yes.</u>
<u>11:10:53</u>	<u>8</u>	<u>Q.</u>	<u>Was that the only time you've ever spoken with</u>
<u>11:10:56</u>	<u>9</u>	<u>her?</u>	
<u>11:10:56</u>	<u>10</u>	<u>A.</u>	<u>Yes.</u>
<u>11:10:57</u>	<u>11</u>	<u>Q.</u>	<u>And how long did you speak with her for?</u>
<u>11:11:00</u>	<u>12</u>	<u>A.</u>	<u>Three to five minutes.</u>
<u>11:11:03</u>	<u>13</u>	<u>Q.</u>	<u>And what did you discuss?</u>
<u>11:11:05</u>	<u>14</u>	<u>A.</u>	<u>That I couldn't get ahold of the Newark office</u>
<u>11:11:08</u>	<u>15</u>	<u>by telephone. Nobody was answering.</u>	
<u>11:11:12</u>	<u>16</u>	<u>Q.</u>	<u>And why did you call the corporate office?</u>
<u>11:11:18</u>	<u>17</u>	<u>A.</u>	<u>To see if the Newark office number that I was</u>
<u>11:11:23</u>	<u>18</u>	<u>calling was active.</u>	
<u>11:11:26</u>	<u>19</u>	<u>Q.</u>	<u>Why were you trying to get ahold of the Newark</u>
<u>11:11:30</u>	<u>20</u>	<u>office at that time?</u>	
<u>11:11:36</u>	<u>21</u>	<u>A.</u>	<u>I don't recall.</u>
11:11:38	22	Q.	Is that all you spoke with the female at the
11:11:41	23		corporate office about?
11:11:43	24	A.	Yes.
11:11:47	25	Q.	What did she tell you about whether the Newark

1 I, CANDY NEWLAND, CSR No. 14256, certify that the
2 foregoing proceedings were taken before me at the time
3 and place herein set forth, at which time the witness
4 was duly sworn, and that the transcript is a true record
5 of the testimony so given.

6

7 Witness review, correction, and signature was

8

(X) by Code. (X) requested.

9

waived. not requested.

10

11 stipulation.

11 stipulation.

12

3 The dismantling, unsealing, or unbinding of the
4 original transcript will render the reporter's
5 certificate null and void.

16

17

I further certify that I am not financially interested in the action, and I am not a relative or employee of any attorney of the parties nor of any of the parties.

20

Dated this 29TH day of May, 2018.

21

22

33

24

85

CANDY NEWLAND, CSR 14256

EXHIBIT "B"

**OWEN ORARIO DIAZ, JR. VOLUME III
DIAZ vs TESLA, INC.**

June 21, 2019
293

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DEMETRIC DIAZ, OWEN DIAZ,) Case No. 3:17-CV-06748-WHO
and LAMAR PATTERSON,)
)
Plaintiffs,)
)
vs.)
)
TESLA, INC. dba TESLA)
MOTORS, INC.; CITISTAFF)
SOLUTIONS, INC.; WEST)
VALLEY STAFFING GROUP;)
CHARTWELL STAFFING)
SERVICES, INC.;)
NEXTSOURCE, INC.;)
DOES 1-50, inclusive,)
)
Defendants.)
)

Volume III

DEPOSITION OF OWEN ORAPIO DIAZ, JR.

PAGES 293 THROUGH 441

SAN FRANCISCO, CALIFORNIA

JUNE 21, 2019

REPORTED BY: MICHAEL CUNDY, CSR 12271

OWEN ORARIO DIAZ, JR. VOLUME III
DIAZ vs TESLA, INC.June 21, 2019
300

1	Kumagai, representing Citistaff.	09:34:02
2	MS. JENG: Patricia Jeng, from Sheppard	09:34:07
3	Mullin, representing Tesla.	09:34:08
4	MS. AVLONI: Navruz Avloni, here on behalf of	09:34:10
5	the plaintiff, Owen Diaz.	09:34:12
6	THE VIDEOGRAPHER: Would the court reporter	09:34:15
7	please swear in the witness?	09:34:16
8		09:34:34
9	Whereupon,	09:34:34
10	OWEN ORARIO DIAZ, JR.,	09:34:34
11	having first been called as a witness, was duly sworn	09:34:34
12	and testified as follows:	09:34:34
13		09:34:34
14	EXAMINATION	09:34:34
15	BY MR. ARANEDA:	09:34:34
16	Q Mr. Diaz, good morning. My name is Juan	09:34:34
17	Araneda. I'm representing Defendant nextSource, who	09:34:37
18	is now a party in this lawsuit.	09:34:39
19	I appreciate you being here today.	09:34:42
20	I'm going to be taking your deposition today,	09:34:44
21	and I understand that you have already sat through two	09:34:45
22	other sessions for your deposition; is that correct?	09:34:47
23	A Yes, sir.	09:34:52
24	Q Okay.	09:34:52
25	A Good morning to you, too.	09:34:52

OWEN ORARIO DIAZ, JR. VOLUME III
DIAZ vs TESLA, INC.June 21, 2019
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1	A I don't recall.	12:45:44
2	Q Is there any reason why you would not have	12:45:44
3	sent this note to Citistaff?	12:45:46
4	A I don't know.	12:45:55
5	MS. AVLONI: I'm going to, again, object to	12:45:56
6	the line of questioning. These are, you know, again,	12:45:57
7	very different from just follow-up questions from this	12:46:00
8	morning's session. These are, essentially, new line	12:46:03
9	of questions related, so --	12:46:05
10	BY MS. STEVENS:	12:46:09
11	Q This morning you testified, Mr. Diaz, that	12:46:10
12	you did not tell nextSource or Citistaff about the	12:46:12
13	problems that you were having with Robert.	12:46:18
14	Is there a reason why you didn't tell	12:46:21
15	Citistaff about these problems?	12:46:23
16	A I don't know.	12:46:27
17	Q You don't know why you didn't tell them?	12:46:27
18	A No.	12:46:29
19	MS. AVLONI: Also, objection to the extent it	12:46:30
20	calls for speculation as to who was employed by	12:46:31
21	Citistaff.	12:46:35
22	BY MS. STEVENS:	12:46:37
23	Q <u>During your -- you also mentioned this</u>	12:46:40
24	<u>morning that you didn't tell anyone at Citistaff or</u>	12:46:43
25	<u>call anyone at Citistaff about Ramon calling you the</u>	12:46:47

OWEN ORARIO DIAZ, JR. VOLUME III
DIAZ vs TESLA, INC.June 21, 2019
425

1	N-word or threatening you.	12:46:50
2	Is there any reason why you didn't tell	12:46:52
3	Citistaff about Ramon calling you the N-word?	12:46:54
4	MS. AVLONI: The same objection to the extent	12:46:58
5	calls for speculation as to who was employed by	12:47:00
6	Citistaff.	12:47:02
7	THE WITNESS: I didn't want to pull the race	12:47:09
8	card by saying something. A lot of times, especially	12:47:12
9	me being African-American, I have to have proof	12:47:16
10	instead of just saying something.	12:47:20
11	BY MS. STEVENS:	12:47:23
12	Q So, Mr. Diaz, did you have an understanding	12:47:25
13	that you were employed by Citistaff?	12:47:27
14	MS. AVLONI: Calls for a legal conclusion.	12:47:30
15	You can respond.	12:47:31
16	THE WITNESS: I had an understanding that	12:47:35
17	Citistaff placed me at Tesla to work. I believe I was	12:47:37
18	an employee for Tesla.	12:47:43
19	BY MS. STEVENS:	12:47:45
20	Q You believe you were an employee for Tesla?	12:47:45
21	MS. AVLONI: Objection. Calls for a legal	12:47:48
22	conclusion.	12:47:50
23	You can respond.	12:47:50
24	THE WITNESS: Yeah. That's what it seemed	12:47:52
25	like. I got all of my direction from them.	12:47:56

OWEN ORAPIO DIAZ, JR. VOLUME III
DIAZ vs TESLA, INC.

June 21, 2019
438

1 STATE OF CALIFORNIA)
2 CITY AND COUNTY OF SAN FRANCISCO) SS:
3

4 I, Michael Cundy, CSR NO. 12271, a
5 Certified Shorthand Reporter of the State of
6 California, do hereby certify:

7 That the foregoing proceedings were
8 taken before me at the time and place herein set
9 forth; that any witnesses in the foregoing
10 proceedings, prior to testifying, were placed under
11 oath; that a verbatim record of the proceedings was
12 made by me using machine shorthand which was
13 thereafter transcribed under my direction; further,
14 that the foregoing is an accurate transcription
15 thereof.

16 I further certify that I am neither
17 financially interested in the action nor a relative or
18 employee of any attorney or any of the parties.

19 IN WITNESS WHEREOF, I have this date
20 subscribed my name.

21
22 Dated: July 3, 2019


Michael Cundy, CSR NO. 12271

23
24
25

EXHIBIT "C"

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DEMETRIC DI-AZ, OWEN)
DIAZ, and LAMAR)
PATTERSON,)
Plaintiffs,)
vs.) Case No.: 3:17-CV-066748
) WHO
)
TESLA, INC., dba TESLA)
MOTORS, INC.; CITISTAFF)
SOLUTIONS, INC.; WEST)
VALLEY STAFFING GROUP;)
CHARTWELL STAFFING)
SERVICES, INC.; and DOES)
1-10, inclusive,)
Defendants.)
_____)

DEPOSITION OF MONICA DE LEON

Thursday, December 6, 2018

TAKEN BEFORE:

HEIDI BELTON, CSR, RPR, CRR, CCRR, CRC
CSR No. 12885

MONICA DE LEON

December 6, 2018

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MONICA DE LEON

December 6, 2018

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10:28:45 1 working at the -- Tesla Fremont had a discrepancy in
10:28:51 2 hours and you needed to figure out what happened
10:28:57 3 there, would you call or contact nextSource, or
10:29:00 4 would you contact Tesla, would you contact both?

10:29:06 5 MR. RUTSCHMAN: Objection; compound;
10:29:07 6 incomplete hypothetical.

10:29:09 7 THE WITNESS: In that case I would contact
10:29:15 8 nextSource, Vanessa. She would be the one that
10:29:17 9 would send me the hours for nextSource.

10:29:31 10 BY MS. AVLONI:

10:29:31 11 Q. And were there any situations where you
10:29:33 12 would contact Tesla instead of Vanessa from
10:29:37 13 nextSource to figure out discrepancy in hours of a
10:29:41 14 CitiStaff employee that was working in the Tesla
10:29:44 15 Fremont facility?

10:29:45 16 MR. RUTSCHMAN: Objection; incomplete
10:29:45 17 hypothetical.

10:29:47 18 THE WITNESS: No.

10:29:47 19 BY MS. AVLONI:

10:29:51 20 Q. You said you would contact Vanessa to
10:29:53 21 figure out hours. Did nextSource keep track of
10:29:57 22 CitiStaff employees' hours who were working at the
10:30:01 23 Tesla Fremont factory location?

10:30:03 24 MR. RUTSCHMAN: Objection; calls for
10:30:03 25 speculation.

MONICA DE LEON
December 6, 2018

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11:10:24	1	Q.	I'm sorry. I mean when you started
11:10:26	2		working to when you stopped working there.
11:10:29	3	A.	(No response.)
11:10:30	4	Q.	Or are you still working there?
11:10:31	5	A.	No, I'm no longer working there.
11:10:34	6	Q.	Do you remember when you started and when
11:10:35	7		you stopped working there?
11:10:36	8	A.	Stopped just barely this -- let's see.
11:10:39	9		We're in December? So I will say September --
11:10:43	10		September/October. September/October.
11:10:48	11	Q.	And you started working there
11:10:50	12		approximately when?
11:10:52	13	A.	A year before. So shortly -- I'll say --
11:10:59	14	Q.	So shortly after you stopped working at --
11:11:03	15	A.	Left --
11:11:03	16	Q.	-- CitiStaff?
11:11:06	17	A.	Yes.
11:11:07	18	Q.	How did you like working at CitiStaff?
11:11:09	19	A.	It was good. It was a great experience,
11:11:13	20		something different.
11:11:16	21	Q.	<u>And then in regards to Tesla, did you --</u>
11:11:24	22		<u>while you were working at CitiStaff did you interact</u>
11:11:28	23		<u>with any employees at Tesla?</u>
11:11:30	24		<u>MR. RUTSCHMAN: Object.</u>
11:11:30	25		<u>BY MS. AVLONI:</u>

MONICA DE LEON
December 6, 2018

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11:11:31 1 Q. As part of your job duties?
11:11:33 2 MR. RUTSCHMAN: Objection; vague and
11:11:33 3 ambiguous.
11:11:34 4 THE WITNESS: Not any Tesla employees.
11:11:51 5 BY MS. AVLONI:
11:11:51 6 Q. Did you interact with any
11:11:53 7 nextSource employees as part of your job duties
11:11:56 8 other than Vanessa?
11:11:57 9 MR. RUTSCHMAN: Objection; vague and
11:11:57 10 ambiguous.
11:11:58 11 THE WITNESS: Yes, I did.
11:11:59 12 BY MS. AVLONI:
11:11:59 13 Q. Who from nextSource would you interact
11:12:01 14 with?
11:12:02 15 A. **Deb.**
11:12:05 16 Q. Do you recall Deb's last name?
11:12:09 17 A. **Griskey.**
11:12:17 18 Q. Do you know what Deb Griskey did for
11:12:21 19 nextSource?
11:12:22 20 A. **From what I recall --**
11:12:23 21 MR. RUTSCHMAN: Objection; calls for
11:12:23 22 speculation.
11:12:23 23 THE WITNESS: From what I recall, she
11:12:25 24 handled the process of bringing people onboard with
11:12:36 25 them at Tesla.

MONICA DE LEON

December 6, 2018

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04:41:05 1 e-mail after receiving your e-mail?

04:41:08 2 MR. RUTSCHMAN: Objection; calls for

04:41:08 3 speculation.

04:41:10 4 THE WITNESS: No, I do not.

04:41:12 5 BY MS. AVLONI:

04:41:12 6 Q. Did you take any action related to what's

04:41:20 7 described in Owen Diaz' e-mail regarding Ramon? Did

04:41:25 8 you take any action after he forwarded you the

04:41:29 9 e-mail?

04:41:29 10 MR. RUTSCHMAN: Objection; the document

04:41:30 11 speaks for itself.

04:41:34 12 THE WITNESS: The action was sending it to

04:41:37 13 Bruce.

04:41:37 14 BY MS. AVLONI:

04:41:38 15 Q. Did you ever follow up with Bruce

04:41:41 16 regarding Owen Diaz' complaint about Ramon?

04:41:49 17 **A. No, I didn't.**

04:41:50 18 Q. Did you ever follow up with William

04:41:53 19 Hidalgo whether he took any steps to address Owen

04:41:55 20 Diaz' concerns regarding Ramon?

04:41:58 21 **A. No, I didn't.**

04:42:00 22 Q. So the only action you took relating to

04:42:02 23 Owen Diaz' complaint about Ramon is to forward Owen

04:42:05 24 Diaz' complaint to Bruce and William; is that

04:42:08 25 correct?

MONICA DE LEON
December 6, 2018

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04:42:11 1 A. Correct. My -- when Owen Diaz first made
04:42:17 2 this complaint, he made it in October 17 of 2015 --
04:42:25 3 Q. I see that.
04:42:26 4 A. -- and I didn't receive it -- we --
04:42:28 5 CitiStaff didn't receive or wasn't aware -- I wasn't
04:42:32 6 aware of this until January 23, 2016.
04:42:35 7 Q. I see that. But once you did become aware
04:42:36 8 of it, sitting here today the only action you recall
04:42:39 9 taking is forwarding it to Bruce and William; is
04:42:41 10 that correct?
04:42:42 11 A. Yes. And letting them know about it, yes.
04:42:45 12 Q. Did you verbally talk to them about the
04:42:49 13 e-mail you forwarded to them as well? Or did you
04:42:51 14 just forward them the e-mail?
04:42:53 15 A. I had previously spoken to Bruce, but
04:43:01 16 pretty much e-mailed this to Bruce.
04:43:03 17 Q. Do you recall what you discussed with
04:43:05 18 Bruce regarding Owen's complaint about Ramon?
04:43:10 19 MR. RUTSCHMAN: Objection; misstates the
04:43:10 20 witness' testimony.
04:43:15 21 THE WITNESS: No, just -- just -- just the
04:43:18 22 situation basically. So --
04:43:21 23 BY MS. AVLONI:
04:43:22 24 Q. You just told Bruce what was in the
04:43:23 25 e-mail?

MONICA DE LEON
December 6, 2018

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1 REPORTER'S CERTIFICATION

2

3 I, Heidi Belton, Certified Shorthand
4 Reporter in and for the State of California, do
5 hereby certify:

6

7 That the foregoing witness was by me duly
8 sworn; that the deposition was then taken before me
9 at the time and place herein set forth; that the
10 testimony and proceedings were reported
11 stenographically by me and later transcribed into
12 typewriting under my direction; that the foregoing
13 is a true record of the testimony and proceedings
14 taken at that time.

15

16 IN WITNESS WHEREOF, I have subscribed my
17 name on this date:

18

19

20

21

22

H. Belton

23

Heidi Belton, CSR, RPR, CRR, CCRR, CRC
CSR No. 12885

24

25